IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 6351 of 2005
Date of Decision: 29 .9.2006

Parkash Ram ...Petitioner

Versus

Yashpal Sharma ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Petitioner in person.

Shri Arun Palli, Advocate, for the respondent.

JUDGMENT

The tenant is in revision aggrieved against the ejectment order passed by the Courts below on the ground that the same is required for bona-fide use and occupation of the landlord.

The landlord has sought ejectment of the petitioner herein, inter-alia, on the ground that he has retired from U.P. State Electricity Board and settled at Hoshiarpur, after completing 30 years of service. He intends to set up the business of Public Call Office (for short `PCO') and to install photostat machines for the commercial purpose in the shop in question, which is situated in the heart of the city. It was also mentioned that he has got another shop adjoining to the shop in question, which is in possession of a tenant and that another shop at Sutheri Road in occupation of his son for the last six years and that he is not in possession of any vacant shop within the municipal limits of Hoshiarpur.

In the written statement filed, it is the case of the tenant that the landlord retired from the job more than 10 years back and since then he is

living at Hoshiarpur. It is stated that the shop adjoining to the shop in dispute was earlier in possession of one Madan Lal, who vacated the same seven years back. Thereafter, the shop was let out to one Kala Singh, who was running a General Store therein for about five years and then vacated the same about two years back and handed over vacant possession to the landlord. Thereafter, the same was let out about two years back to a chemist. It was, thus, alleged that the fact of letting out the shop proves that the landlord has no necessity to run a business and the present ground is only a mala-fide to get the shop vacated.

In the replication, it was pleaded that the shop adjoining to the shop in question is bigger in size to the shop in question and thus not suitable for the purposes of doing the business of PCO as well as the photostats. It was stated that the shop in question is best suitable, which is 5 feet wide only and that the shop in dispute is adjoining to the house of the landlord. While appearing as PW3, the landlord has deposed that he intends to instal the photostat machines for commercial purpose in the shop in question, which is situated in the heart of the city at Railway Road and is the best place to do such kind of business and that the said place is adjacent to his house. He has deposed that another shop adjoining to the shop in dispute is bigger in size. The same was vacated by the previous tenant with the condition that the landlord will induct a fresh tenant of his choice as he had taken premium from him and that the landlord was not delivered the possession of the shop.

In cross-examination, the size of the shop in dispute is disclosed as 5 feet x 23 feet, whereas size of the adjoining shop is 8 feet x 23 feet. The tenant has examined himself as RW2 and deposed that the

adjoining shop has been let out to one Kala Singh about eight years back who carried out the business of general store in the said shop for about five years and then he vacated the same and handed over the vacant possession of the shop to the landlord. After the shop remained vacant for 2/3 months with the signboard that the shop is vacant for rent, the same was let out to a chemist on the monthly rent of Rs.2000/-. The tenant also produced Kala Singh, previous tenant in the adjoining shop, who has deposed that the word "to-let" was written on the shutter of the shop for about six months prior to his vacating the same. But he could not say whether the signboard of to-let was got written by the owner. But he did not object to the writing of the same. It is also admitted that there were wooden fixtures in the said shop, which were sold to Star General Store six months prior to the vacation of the shop for a sum of Rs.10,000/-. He denied the suggestion that the possession was directly delivered to Arvinder Singh, the tenant who is running chemist shop.

After considering the respective contentions of the parties, the learned Rent Controller passed an order of eviction holding that the premises in dispute are required for bona-fide use and occupation of the tenant. An argument raised by the tenant that the landlord has not pleaded that he is not occupying any other premises and that he has not vacated the building and rented out the same and therefore, the landlord is not entitled to seek ejectment, did not find favour with the learned Rent Controller. The learned Rent Controller found that since it is the admitted case that the landlord retired from U.P. State Electricity Board and is having three sons and daughter and one son is running electrical business at Hoshiarpur, therefore, the stand of the landlord that he wants to start the business of

PCO and photostat machines cannot be doubted. The landlord is the best judge of his requirement and ordinarily the Court will not impose its own standards. It was found that the averments made in the pleadings satisfy the requirement of the provisions of law and it will not make much difference if the same are not pleaded exactly in the same words .

In appeal against the order of ejectment, the tenant relied upon a Full Bench Judgment of this Court reported as **Banke Ram v. Shrimati Saraswati Devi 1977 RCR 595 (F.B.).** The learned Appellate Authority found that the tenant has not raised any objection in reply and that there is anything to show that the rights of the tenant have been prejudiced by not raising specific pleadings by the landlord. In this respect, it was found that since the parties have understood the case and led evidence on the said question, therefore, the lack of pleadings in exact words loses significance. The Court relied upon the judgments of this Court reported as **Shanti Mohant v. Krishna Devi 2002(1) PLR 426** and M/**s British Motor Car Company Pvt. Limited v. Sewak Sabha Charitable Trust 2003(3) PLR 195.**

While considering the bona-fide requirement, the Appellate Authority found that the landlord had retired from U.P. State Electricity Board about 10 years back and one of the sons of landlord is running an electrical shop at Hoshiarpur. The landlord cannot be compelled to run the business of PCO or photostat machines along with his son. The landlord is the best judge of his requirement and has a complete freedom in the matter. In revision, the tenant has sought to dispute his eviction on the ground that two necessary ingredients were not pleaded and that there is no evidence on the records and therefore, in view of the ratio of the Full Bench Judgment,

the orders of eviction passed by the Courts below, are not sustainable.

Though both the Courts have discussed the entire evidence led by the parties, I have also gone through the evidence produced by the parties. The landlord has pleaded that another shop adjoining to the shop in question is in possession of the tenant whereas the shop at Sutheri road is in possession of his son and that the landlord is not in possession of any vacant shop within the municipal limits. In replication, the landlord has explained that the shop in question is the best suitable which is 5 feet wide only and is adjacent to his house. In evidence, the landlord has deposed that the adjoining shop was vacated by the previous tenant Kala Singh subject to the letting out of the same to the tenant of his choice. The tenant has also led evidence in respect of availability of the alternative accommodation after the commencement of East Punjab Urban Rent Restriction Act, 1949 and has produced the tenant, who was in possession of the adjoining shop. Thus, it is apparent that the parties were aware of the factum of falling vacant of the adjoining shop and its letting out to another tenant. With this kind of pleadings and evidence, the non-pleading of necessary ingredients loses its significance. That was the view taken by this Court in **British Motor's case (supra)**. Therefore, I do not find any substance in the argument raised in the memo of revision.

In respect of the adjoining shop, suffice it to say that the shop is bigger in size. The landlord has explained that the same was let out by the previous tenant. It has come in evidence that the signboard of to-let was written on the shutter of the shop for a period of six months when the shop was still in possession of the previous tenant. Therefore, the stand taken by the landlord that the adjoining shop was let out by the previous tenant Kala

Singh, cannot be said to be unacceptable.

The findings recorded by the Courts below are based upon appreciation of entire evidence. The said findings cannot be said to be suffering from any patent illegality or irregularity, which may warrant interference by this Court in exercise of its revisional jurisdiction.

Hence, the present revision petition is dismissed.

September 29, 2006 **(Hemant Gupta)**
ds **Judge**